

to oral communication by the representative must first be fulfilled. In the event of settlement at the prepenalty stage, the claim proposed in the prepenalty notice will be withdrawn, the respondent will not be required to take a written position on allegations contained in the prepenalty notice, and the Office of Foreign Assets Control will make no final determination as to whether a violation occurred. The amount accepted in settlement of allegations in a prepenalty notice may vary from the civil penalty that might finally be imposed in the event of a formal determination of violation. In the event no settlement is reached, the time limit specified in paragraph (a) of this section for written response to the prepenalty notice will remain in effect, unless additional time is granted by the Office of Foreign Assets Control.

(f) *Guidelines.* Guidelines for the imposition or settlement of civil penalties by the Office of Foreign Assets Control have been codified in the Appendix to 31 CFR part 501, the Reporting, Procedures and Penalties Regulations.

(g) *Representation.* A representative of the respondent may act on behalf of the respondent, but any oral communication with the Office of Foreign Assets Control prior to a written submission regarding the specific allegations contained in the prepenalty notice must be preceded by a written letter of representation, unless the prepenalty notice was served upon the respondent in care of the representative.

■ 15. Section 538.704 is revised to read as follows:

**§ 538.704 Penalty imposition or withdrawal.**

(a) *No violation.* If, after considering any response to the prepenalty notice and any relevant facts, the Director of the Office of Foreign Assets Control determines that there was no violation by the respondent named in the prepenalty notice, the Director shall notify the respondent in writing of that determination and of the cancellation of the proposed monetary penalty.

(b) *Violation.*—(1) If, after considering any written response to the prepenalty notice, or default in the submission of a written response, and any relevant facts, the Director of the Office of Foreign Assets Control determines that there was a violation by the respondent named in the prepenalty notice, the Director is authorized to issue a written penalty notice to the respondent of the determination of the violation and the imposition of the monetary penalty.

(2) The penalty notice shall inform the respondent that payment or

arrangement for installment payment of the assessed penalty must be made within 30 days of the date of mailing of the penalty notice by the Office of Foreign Assets Control.

(3) The penalty notice shall inform the respondent of the requirement to furnish the respondent's taxpayer identification number pursuant to 31 U.S.C. 7701 and that such number will be used for purposes of collecting and reporting on any delinquent penalty amount.

(4) The issuance of the penalty notice finding a violation and imposing a monetary penalty shall constitute final agency action. The respondent has the right to seek judicial review of that agency action in federal district court.

Dated: April 26, 2005.

**Robert W. Werner,**

*Director, Office of Foreign Assets Control.*

Approved: May 9, 2005.

**Juan C. Zarate,**

*Assistant Secretary (Terrorist Financing and Financial Crimes), Department of the Treasury.*

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**DEPARTMENT OF HOMELAND SECURITY**

**Coast Guard**

**33 CFR Part 165**

**[CGD09-05-014]**

**RIN 2115-AA87**

**Security Zone; Duluth Harbor, Duluth, MN**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary security zone in Duluth's inner harbor for the Commissioning ceremony of the Coast Guard Cutter ALDER. The security zone is necessary to ensure the security of dignitaries attending this ceremony on June 10, 2005. The security zone is intended to restrict vessels from a portion of Duluth Harbor in Duluth, Minnesota.

**DATES:** This rule is effective from 10 a.m. (local) until 3 p.m., June 10, 2005.

**ADDRESSES:** Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket (CGD09-05-014) and are available for inspection or copying at the U.S. Coast Guard Marine Safety Office Duluth, 600 South Lake Avenue,

Canal Park, Duluth, Minnesota 55802, between the hours of 7:30 a.m. and 3:30 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** LT Greg Schultz, U.S. Coast Guard Marine Safety Office Duluth, at (218) 720-5285.

**SUPPLEMENTARY INFORMATION:**

**Regulatory Information**

On May 13, 2005, we published a notice of proposed rulemaking in the **Federal Register** (70 FR 25514). We received no comments on the proposed rule. No public hearing was requested, and none was held. Under 5 U.S.C. 553 (d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. The regulation is needed to protect dignitaries during the event and a delay would be contrary to the public interest.

**Background and Purpose**

The security zone will encompass the waters of Duluth Harbor, within a 500 foot radius from a fixed point located at 46°46'17" N, 92°05'26" W. These coordinates are based upon North American Datum (NAD 1983).

Entry into, transit through, or anchoring within this security zone is prohibited unless authorized by the Captain of the Port Duluth or his designated on-scene representative. The designated on-scene representative will be the Coast Guard Patrol Commander. The Coast Guard Patrol Commander may be contacted via VHF Channel 16.

**Regulatory Evaluation**

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security (DHS).

The security zone will only be in effect for a few hours on the day of the event and vessels may easily still transit inside the Duluth Harbor.

**Small Entities**

Under the Regulatory Flexibility Act (5 U.S.C. 601-612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not

dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities: the owners or operators of vessels intending to transit or anchor in this portion of Duluth Harbor from 10 a.m. to 3 p.m. June 10, 2005. This regulation will not have a significant economic impact for the following reasons. The regulation is only in effect for one day of the event. The designated area is being established to allow for maximum use of the waterway for commercial and recreational vessels. The Coast Guard will inform the public that the regulation is in effect via Marine Information Broadcasts.

#### Assistance for Small Entities

Under Section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we offer to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process. Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the U.S. Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

#### Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

#### Federalism

We have analyzed this rule under Executive Order 13132, Federalism, and have determined that this rule does not have implications for federalism under that Order.

#### Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 or more in any one year.

Though this proposed rule would not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

#### Taking of Private Property

This rule will not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

#### Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

#### Protection of Children

The Coast Guard has analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

#### Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulation That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a “significant energy action” under that order because it is not a “significant regulatory action” under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

#### Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

#### Environment

We have analyzed this proposed rule under Commandant Instruction M16475.ID, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969

(NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, we believe that this rule should be categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation. This event establishes a safety zone, therefore paragraph (34)(g) of the Instruction applies.

A preliminary “Environmental Analysis Check List” is available in the docket where indicated under **ADDRESSES**. Comments on this section will be considered before we make the final decision on whether the rule should be categorically excluded from further environmental review.

#### List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and record keeping requirements, Security measures, Waterways.

■ For the reasons set out in the preamble, the Coast Guard amends 33 CFR Part 165 as follows:

#### PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

**Authority:** 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. A new temporary § 165.T09–014 is added to read as follows:

#### § 165.T09–014 Security Zone; Duluth Harbor, Duluth, Minnesota.

(a) *Location*. The following area is designated as a security zone: The waters of Duluth Harbor, within a 500 foot radius from a fixed point located at 46°46'17" N, 92°05'26" W. These coordinates are based upon North American Datum (NAD 1983).

(b) *Effective time and date*. This section is effective from 10 a.m. until 3 p.m. (local), on June 10, 2005.

(c) *Regulations*. Entry into, transit through, or anchoring within the security zone is prohibited unless authorized by the Captain of the Port Duluth or the Coast Guard Patrol Commander.

Dated: June 6, 2005.

**H.M. Nguyen,**

*Commander, U.S. Coast Guard, Captain of the Port Duluth.*

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